

UNITED STATES COURT OF APPEALS

FILE COPY

FOR THE NINTH CIRCUIT

RELIANCE INSURANCE CO., (in  
liquidation), a Pennsylvania corporation,

Plaintiff-counter-defendant -  
Appellee,

v.

THE DOCTORS COMPANY,

Defendant-counter-claimant -  
Appellant.

No. 04-15558  
D.C. No. CV-02-00159-HG

JUDGMENT

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JUL 18 2005 ✓

at 1 o'clock and 00 min. P M  
SUE BEITIA, CLERK

RELIANCE INSURANCE CO., (in  
liquidation), a Pennsylvania corporation,

Plaintiff-counter-defendant -  
Appellant,

v.

THE DOCTORS COMPANY,

Defendant-counter-claimant -  
Appellee.

No. 04-15598  
D.C. No. CV-02-00159-HG

JUDGMENT

Appeal from the United States District Court for the District of Hawaii  
(Honolulu).

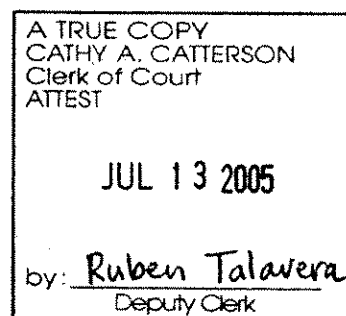
This cause came on to be heard on the Transcript of the Record from the  
United States District Court for the District of Hawaii (Honolulu) and was duly

EXHIBIT 5  
PAGE 153

submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is **AFFIRMED.**

Filed and entered 05/26/05



NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

MAY 26 2005

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

RELIANCE INSURANCE CO. (in  
liquidation), a Pennsylvania corporation,

Plaintiff-counter-defendant - Appellant,  
Cross-Appellee

v.

THE DOCTORS' COMPANY,

Defendant-counter-claimant - Appellee.  
Cross-Appellant

No. 04-15558

04-15598

D.C. No. CV-02-00159-HG

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Helen Gilmor, District Judge, Presiding

Argued and Submitted May 10, 2005  
Honolulu, Hawaii

Before: DW NELSON, KOZINSKI, and CALLAHAN, Circuit Judges.

1. The district court did not err in dismissing TDC's counterclaim of setoff on abstention principles under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). See *City of Tucson v. U.S. West Communications, Inc.*, 284 F.3d 1128, 1133 (9th Cir. 2002).

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

2. The district court did not err in granting summary judgment to Reliance on its claim for subrogation. The Straub Clinic and Drs. Kubota and Pearce, as parties to the settlement, were “legally obligated to pay” the settlement amount as “damages” within the meaning of the TDC policy; and by settling, TDC could not overcome the presumption of equal fault established by Hawaii law. *See* Hawaii Rev. Stat. §§ 663-12, -17.

3. The district court did not abuse its discretion in denying TDC’s motion for reconsideration. *See* Fed. R. Civ. P. 60(b); *see also Maraziti v. Thorpe*, 52 F.3d 252, 253 (9th Cir. 1995).

4. Reliance’s Motion for Judicial Notice is granted. *See* Fed. R. Evidence 201.

**AFFIRMED.**

